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目 录

新法速递 NEW LAWS AND REGULATIONS WATCH.....	3
SOLAS 公约修正案新规定 7 月 1 日生效.....	3
税务总局调整启运港退(免)税管理办法.....	6
商务部发布新修订的《境外投资管理办法》.....	9
融资租赁货物出口退税政策将扩展至全国.....	11
国务院再次取消调整一批行政审批项目 中外合作打捞等审批取消.....	14
 实时资讯 REAL-TIME INFORMATION.....	 17
烟台港西港区获开放资质 建设中国北方能源进口港.....	17
江苏昆山成两岸冷链物流产业合作试点城市.....	19
高盛分析铁矿石价格未来三年仍面临挑战.....	21
51 家船企入围首批“白名单”银行放贷仍看偿债能力.....	23
纽约船东 Eagle Bulk 再度状告大连圣泰.....	25
 案例分析 CASE STUDY.....	 28
海上货物运输合同承运人的认定.....	28
 资讯选编 INFORMATION SELECTION.....	 38
Shipment was not Dispatched — Exporter is Suing for Damages.....	38

SOLAS 公约修正案新规定 7 月 1 日生效

国际海上人命安全公约 SOLAS 修订案的新规定 2014 年 7 月生效：
从 7 月 1 日，要求船舶必须制定营救落水人员的详细计划和程序。

该项 SOLAS 公约修正案于 2012 年获得通过，并作为国际海事组织（IMO）关于大型客船安全工作的一部分，旨在确保所有船舶有能力采取有效措施利用适当营救设备从水中或者救生艇中营救落水人员。

这项新规定旨在为船长和船上其他船员在营救落水人员时提供指导，最大程度减少对船上营救人员和落水人员造成伤害的风险，加强海上安全。

2014 年 7 月 1 日以前建造的船舶，应在 2014 年 7 月 1 日以后进行的第一次设备安全定期检验或换证检验之前符合本要求。

2014 年 7 月 1 日以后建造的船舶，应在接近于船舶建造检验完成，最晚不迟于签发设备安全证书之前符合本要求。

Amendments to the International Convention for the SOLAS

Shall Come into Force from July 1st

Provisions of Amendments to the International Convention for the Safety of Life at Sea shall come into force from July. From Jul. 1st, detailed life-saving plans and procedures are required for ships.

The Amendment was approved in 2012. As a part of large-sized ships safety program of IMO, the provisions are to ensure that ships are capable of rescuing drowning people by using proper rescue equipment.

It also provides for the guidance of rescuing drowning people for captain and crew, in order to minimize the risk of rescue and ensure marine safety.

Ships constructed before 01/07/2014 should be confirmed with the safety requirement before the first regular inspection of equipment safety or certificate-change inspection after 01/07/2014.

Ships constructed after 01/07/2014 should be confirmed with the safety requirement near the complement of ship

construction inspection and no later than the issuance of equipment safety certificate.

(Source: www.cnss.com.cn)

税务总局调整启运港退（免）税管理办法

日前，税务总局公布调整后的《启运港退（免）税管理办法》，废止 2012 年的《启运港退（免）税管理办法》，明确了扩大启运港退税政策试点范围后，退（免）税备案、运输企业和运输工具确定、退（免）税申报、退（免）税审核等内容，自 9 月 1 日起施行。

公告明确，出口企业适用启运港退（免）税政策须同时满足已办理出口退（免）税资格认定开展自营出口货物的增值税一般纳税人、纳税信用为 B 级及以上且不属于出口退税审核关注信息中关注企业级别为一至三级的出口企业、海关实行 B 类及以上管理的出口企业三个条件，退（免）税采取备案管理。

公告要求，出口企业自营出口适用启运港退（免）税政策的货物，凭启运地海关签发的出口货物报关单按现行出口货物劳务退（免）税规定申报办理出口退（免）税，税务机关按照现行出口退税审核系统管理等规定审核退（免）税。

SAT adjusted Regulations of Tax Refund (Exemption) at Port of Departure

The State Administration of Taxation ("SAT") recently

announced the new Regulations of Tax Refund (Exemption) at Port of Departure (the "Regulation"), with the effect from Sep. 1st, and annulled the 2012 Regulation. It clarifies the tax refund (exemption) recording, transport enterprises and transport facilities confirmation, tax refund (exemption) declaration, tax refund (exemption) examination, etc. after extending the scope of port of departure tax refund policy.

The Regulation clarifies that export company should fulfill three requirements before claiming tax refund (exemption): ordinary VAT payer who has tax refund (exemption) certificate and self-running right of export; export company with tax payment credit grade B or above that not being focused enterprise grade 1-3 in export tax refund examination information; export company who was supervised by custom with grade B or above. The tax refund is managed by relative records.

The Regulation also requires that for cargos capable of being claimed tax refund (exemption), export company shall declare tax refund (exemption) with Export Customs Declaration issued by custom of departure place according to

the current Regulations of Tax Refund (Exemption) of Cargo and Labor Export. Tax authority shall examine the tax refund (exemption) according to the current rules of checking export tax refund system management.

(Source: <http://www.chinatax.gov.cn>)

商务部发布新修订的《境外投资管理办法》

据商务部网站消息，9月9日，商务部发布了新修订的《境外投资管理办法》。

新修订《办法》的主要内容包括：一是确立“备案为主、核准为辅”的管理模式，对企业在敏感国家和地区、敏感行业的投资实行核准管理，其余均实行备案。二是缩小核准范围、缩短核准时限，取消了对特定金额以上境外投资实行核准的规定，并将核准时限缩短了5个工作日。三是明确备案要求和程序，企业只要如实、完整地填报《备案表》，即可在3个工作日内获得备案。四是规定省级商务主管部门负责地方企业境外投资开办企业的备案管理，自行印制并颁发《企业境外投资证书》。五是在明确政府将继续为企业提供服务的同时，加大了对企业境外投资行为进行指导和规范的力度。

Ministry of Commerce Publicized Newly Revised Administrative Measures for Overseas Investment

According to the news on the website of Ministry of Commerce, on Sep. 9th, Ministry of Commerce publicized the revised Administrative Measures for Overseas Investment (the "Measures").

The main contents of the revised Measures are as follows: 1. Make sure the management module that “record the first, approval the second”. Verification and approval management is mainly for the investment of enterprises in sensitive areas and industries. Record management is for the rest investment. 2. Reduce the scope and shorten the period of verification and approval. The provision of verifying and approving the overseas investment of specific amount is removed, and the period has cut down to 5 working days. 3. Clarify the requirement and procedure of record. As long as enterprises fulfill the Record Form accurately and completely, record shall be accomplished in 3 working days. 4. Authorize provincial administrative department of commerce to manage the record of local enterprises’ overseas investment on company establishments and issue the Certificate of Enterprises Overseas Investment. 5. With ensuring the government to continue providing service for enterprises, the Measures strengthen the guidance and specification of overseas investments.

(Source: www.mofcom.gov.cn)

融资租赁货物出口退税政策将扩展至全国

从财政部税政司获悉，财政部、海关总署、国家税务总局日前联合发布《关于在全国开展融资租赁货物出口退税政策试点的通知》，将现行在天津东疆保税港区试点的融资租赁货物出口退税政策扩大到全国统一实施，10月1日起施行。

融资租赁出口货物的范围，包括飞机、飞机发动机、铁道机车、铁道客车车厢、船舶及其他货物。对融资租赁企业、金融租赁公司及其设立的项目子公司，以融资租赁方式租赁给境外承租人且租赁期限在5年（含）以上，并向海关报关后实际离境的货物，试行增值税、消费税出口退税政策。

对融资租赁出租方购买的，并以融资租赁方式租赁给境内列名海上石油天然气开采企业且租赁期限在5年（含）以上的国内生产企业生产的海洋工程结构物，视同出口，试行增值税、消费税出口退税政策。

融资租赁出口货物适用的增值税退税率，按照统一的出口货物适用退税率执行。

Policies of Financial Leasing Goods Export Tax Refund Would

Be Expand Nationwide

It is reported from the Division of Tax, Ministry of Finance that recently the Ministry of Finance, the General Administration of Customs, and the State Administration of Taxation jointly announced the Notice of Expanding Policy Experiments of Financial Leasing Goods Export Tax Refund. The current tax refund policy at Dongjiang Free Trade Port Zone of Tianjin would be implemented nationwide, with the effect from Oct. 1st.

Financial leasing goods contain aircrafts, aircraft engines, railway locomotives, railway passenger coaches, ships, etc. Policy of VAT and consumption tax refund shall be implemented for financial leasing companies and their subsidiary companies on goods which are leased to overseas leasees as financial leasing for no less than 5 years and actually departed after declaration.

Policy of VAT and consumption tax refund shall also be implemented on domestically produced ocean engineering structures which are purchased by lessors and leased to

domestic offshore oil and gas exploitation companies for no less than 5 years.

The percentage of VAT refund of financial leasing export goods shall be the same with the standard of general export goods.

(Source: www.chineseshipping.com.cn)

国务院再次取消调整一批行政审批项目 中外合作打捞等审批取消

国务院 8 月 12 日发布决定，再次取消和调整一批行政审批项目等事项，其中涉及交通运输部、国家铁路局和国家邮政局的事项中，取消、下放行政审批项目 9 项，4 项工商登记前置审批事项改为后置审批。

外商与中方打捞人合作打捞审批、铁路企业国有资产产权变动审批、铁路企业公司改制事项审批、铁路运价里程和货运计费办法审批、开办集邮票品集中交易市场许可取消；国家重点水运建设项目竣工验收下放至省级人民政府交通运输行政主管部门；国家公路运输枢纽总体规划审批只取消交通运输部审批，地方人民政府交通运输行政主管部门的审批仍然保留；引航员任职资格审批下放至直属海事系统分支机构；从事海员外派业务审批下放至直属海事管理机构。

国际海上运输业务及海运辅助业务经营审批，国际船舶管理业务经营审批，国内水路运输、水路运输业务经营审批和港口经营许可改为后置审批。

State Council Cancelled A Number of Administrative Approval Items, Including the Cooperative Salvage

State Council announced on Aug. 12th that a number of administrative approval items were cancelled again. Nine items of Ministry of Transport, National Railway of Administration and State Post Bureau are cancelled or delegated to lower levels. Four items which needs to be approved before commercial registration are changed to be approved after registration.

The administrative approval for the cooperative salvage, property right changes of state-owned assets of railway enterprises, items of Railway enterprises restructuring, railway freight mileage and freight calculation, trading market permit of stamps are cancelled. Completion inspection and acceptance of national key water transportation construction project is delegated to the transport administrative department of local people's government at provincial level. Overall Planning of national highway transport do not need to be approved by Ministry of Transport, but local department's approval remains. Approval of qualification of pilots is delegated to the branches of maritime bureau. Approval of crew manning business is delegated to branches of maritime administrative bureau.

Approval of international ocean shipping business and marine auxiliary services, international ship management business, domestic waterway transport and relevant business, and port operation licenses are changed to be done after registration.

(Source: www.moc.gov.cn)

烟台港西港区获开放资质 建设中国北方能源进口港

经中国国务院批准，烟台港西港区日前已获得正式开放资质，烟台港西港区将建成中国北方能源进口港。

烟台港西港区 2005 年开工建设，规划陆域面积 50 平方公里，涵盖液体化工、通用散杂、大宗散货、原油及战略石油储备基地、集装箱、修造船工业等功能区，建成后港口年吞吐量达 2 亿吨，相当于再造一个现在的烟台港。

目前，烟台港西港区已建成 5 万吨级通用泊位、30 万吨级矿石卸船泊位等码头泊位，其中，30 万吨大型矿石码头、液化油品码头、通用码头已相继投入试生产。

烟台港扼守渤海湾入海口，已与世界上 100 多个港口通航。

Yantai Port West Harbor Qualified to Open, Aiming at Becoming Northern China Energy Import Port

Approved by Chinese State Council, Yantai port west harbor

recently gained qualification to open and would be constructed as northern energy import port.

The construction started in 2005. The designed land area is 50 square kilometers. The harbor contains functional domains of liquid chemicals, general bulk cargos, major bulks, crude oil and strategic petroleum reserve, containers, ship building and repairing industry. The throughput would be 200 million tons as much as the Yantai port's data.

Recently 50,000 ton general berths and 300,000 ton mineral discharging berths have accomplished, and 300,000 ton mineral berths, liquefied petroleum product berths and general berths have been put in trial running.

Yantai Port is located at estuary of Bohai Gulf, and has been opened to navigation with more than 100 ports all over the world.

(Source: www.cnss.com.cn)

江苏昆山成两岸冷链物流产业合作试点城市

江苏省昆山市目前正式成为两岸冷链物流产业合作试点城市，冷链物流亦成为昆山市首个获批开展两岸经济合作试点的产业。

据悉，试点将围绕城市冷链物流发展规划、冷链基础设施改造升级等展开，以促进业界项目合作、整合冷链资源、提升城市冷链物流发展水平为重点。

在海峡两岸经济合作框架协议(ECFA)背景下，两岸经济合作委员会 2009 年启动两岸产业合作，冷链物流是两岸经济合作委员会确定的先期合作的 5 个产业之一。

Kunshan Becomes an Experiment of Cold-chain Logistics Cooperation

Recently Kunshan, Jiangsu Province has officially become an experiment city of cold-chain logistics cooperation of Taiwan and the mainland. Cold-chain logistics is also the first industry that approved to develop economic cooperation.

The experiment will be about urban cold-chain logistics development planning and cold-chain infrastructure renewal, in order to promote cooperation of industrial projects, integration of cold-chain resources and urban cold-chain logistics development.

With the background of Economic Cooperation Framework Agreement (ECFA), Economic Cooperation Commission has initiated cooperation since 2009, and cold-chain logistics is one of the five industries that confirmed by the Commission in early time of the cooperation.

(Source: news.xinhuanet.com)

高盛分析铁矿石价格未来三年仍面临挑战

高盛在一份报告中指出，随着中国港口库存逼近记录水平，且中国及海外的矿井开始关闭，铁矿石价格的深跌对海上生产者的影响将加大。

高盛预计铁矿石 2015 年价格 80 美元/公吨，2016 年料 79 美元/公吨，2017 年料为 78 美元/公吨。

高盛认为，2015 年全球铁矿石产量料为 1.1 亿公吨，2016 年料为 7500 万公吨。此外，2015 年至 2016 年每年海上生产量料 4000 万公吨。

并称，自 2015 年起中国港口的再存储可能发挥更温和的作用。

Goldman Analyzed that Iron Ore Futures Struggle in Three Years

Goldman said in a report that as the Chinese port inventories are near the recorded level and domestic and overseas mines started to close, the slump of iron ore price will impact Chinese and seaborne producers alike.

Goldman kept its 2015 iron ore price forecast at \$80 a tonne, but slashed its 2016 estimate to \$79 and its 2017 projection to \$78.

Goldman saw around 110 million tonnes of global iron ore capacity closing in 2015 and another 75 million tonnes in 2016, and 40 million tonnes from seaborne producers in 2015 and 2016.

Goldman also said that the restock of Chinese ports might play a more moderate role from 2015.

(Source: www.cnss.com.cn)

51 家船企入围首批“白名单” 银行放贷仍看偿债能力

工信部日前公示了首批入围《船舶行业规范条件》(以下简称《规范条件》)的企业, 51 家入围企业中过半为央企和地方国企, 而民营企业则更多集中在江浙地区。

《规范条件》的目的在于引导社会资源向符合条件的优势企业集中, 尤其在银行信贷和政府扶持方面。不过, 在一些分析人士看来, 即便是进入“白名单”的企业也不一定能获得银行青睐, 因银行信贷看中的是财务指标。在提高行业集中度这一关键问题上, 短期来看, “白名单”带来的效果或许并不大。

Fifty-one Ship Building Companies Listed in the “White List”,
While Banks Still Focus on Solvency

Ministry of Industry and Information Technology recently publicized the first group of companies that conform to the Standard of Ship Building Industry (the “Standard”). Among 51 qualified companies, more than half are state-owned key enterprises and local state-owned enterprises. Private enterprises are more located in Jiangsu Province and Zhejiang Province.

The Standard aims at leading social resources to qualified enterprises, especially the resources of bank loan and government support. However, some analyzers suppose that the companies on the list may not be favored by banks because banks concern more on financial index. In term of promoting industry concentration, the influence of “white list” may not be so obvious in short term.

(Source: www.chineseshipping.com.cn)

纽约船东 Eagle Bulk 再度状告大连圣泰

纽约船东 Eagle Bulk Shipping 再度针对中国租船商大连圣泰国际货运的旗下资产发起行动，以讨回据称被拖欠的租金以及燃料费用。

这次，仍由该船东下设的 Owl Shipping 出面，在美国联邦法院提起新的诉讼。它要求法官扣押大连圣泰旗下与 Inter Pride 轮（7.4 万吨级，造于 2000 年）有关的总价值为 159 万美元的资产。据悉 Inter Pride 轮是一艘大连圣泰租来的船。

这是两个月来，Eagle Bulk 第二次针对大连圣泰发起诉讼，并要求扣押后者的资产。据悉双方纠纷的缘由是一份租船合同，涉及的船舶为 5.78 万吨级的超大灵便型散货船 Owl 轮（造于 2011 年）。

据 Eagle 的代表律师称，这家总部设于大连的船东自租约生效首日起至今，从未履约付过租金。

目前尚不清楚在最新这起诉讼案中，Eagle 是否已获准扣押目标资产，仅知法官已针对 Eagle 的申请发出法令，但其中的内容未向外界公布。

New York Shipowner Eagle Bulk Sued Dalian Suntime Again

New York Shipowner Eagle Bulk Shipping Inc. sued Chinese charterer Dalian Suntime Int'l Transportation Co., Ltd to recover the charter hire and fuel charge in default.

This time the legal proceeding was initiated again by Owl Shipping representing Eagle Bulk at US federal court. It requests a distraintment of 1.59 million in total including the ship "Inter Pride" (74 thousands tonner, built in 2000). The ship was said to be leased by Suntime.

It is the second lawsuit brought against Suntime by Eagle Bulk in 2 months that requesting distraintment of Suntime's property. The dispute is about a charterparty relating to the ship "Owl"—a 57.8 thousands tonner super handymax bulk carrier (built in 2011).

Eagle's lawyer said that the charterer has never paid for the hire since the effective date of the lease.

It is still unclear that whether or not Eagle Bulk has been permitted to distraint the target property. The judge has

made an order to Eagle but the content has not been announced.

(Source: www.chineseshipping.com.cn)

案例分析 CASE STUDY

海上货物运输合同承运人的认定

中基宁波集团股份有限公司诉敏航公司、海联国际船务有限公司海上货物运输合同案

【案件基本信息】

1、判决书字号：青岛海事法院（2011）青海法海商初字第73号民事判决书

2、案由：海上货物运输合同纠纷

3、当事人：

原告：中基宁波集团股份有限公司（以下简称“中基公司”）

被告：敏航公司（AGILITY SHIPPING COMPANY）

被告：海联国际船务有限公司（SEALINK SHIPPING COMPANY, LIMITED）（以下简称“海联公司”）

【基本案情】

2010年10月21日，原告（买方）与CHINA HUA DONG GROUP LIMITED(鑫诚有限公司)（卖方）在上海就购买70000湿吨（卖方选择+/-10%）铁矿砂签订NBWXIO20101021号买卖合同，约定：装货港为波斯湾，目的港为中国基本港（包括青岛港和日照港），装运时间不迟于2010年11月30

日，价格条件为CFR中国主要港口。2010年10月29日，原告申请中国银行宁波分行开立了以鑫诚有限公司为受益人的不可撤销的LC92A10C1565号跟单信用证，货物单价为每干吨108美元（基于含铁比例达到60%），信用证金额为756万美元。鑫诚有限公司在2010年11月15日临时发票中注明：货物共83972.099吨，扣除水分含量567.651吨后，发票重量为83404.448干吨，100%CFR中国基本港价格为8917603.58美元，98%货物价值为8739251.51美元。2011年1月28日，原告在信用证项下向鑫诚有限公司支付货款8739251.51美元，并支付银行利息37698.95美元。

该批铁矿砂由马绍尔群岛籍“海敏”轮（M.V SEA AGILITY）承运，被告敏航公司为“海敏”轮船所有人。“海敏”轮于1987年在日本建造，净吨位18462，总吨位51087，船籍港为马绍尔群岛共和国Majuro港。

2010年11月11日，货物在波斯湾港装上“海敏”轮，船舶代理EASTERN SEA PASHA(ESP) SHIPPING CO.代表船长施礼岗签发了01号清洁指示提单。提单记载：托运人CHINA HUA DONG GORP LIMITED(鑫诚有限公司)，收货人凭指示，通知方凭指示，货物为83972.099湿吨散装铁矿砂，卸货港中国基本港，运费预付。提单背面首要条款约定，如起运港所在国参加了1924年海牙规则，则适用海牙规则；如起运港所在国未加入该规则（公约），则适用目的港国家的法律。原告经托运人鑫诚有限公司背书受让了该提单。

2010年11月18日，“海敏”轮在航行过程中中轴断裂。2010年12月1日及2011年1月29日，被告敏航公司与海马拖航国际贸易有限公司（Seahorse Towage International Pte Ltd.）在新加坡分别签订国际海上拖航

合同及附约，约定由海马拖航国际贸易有限公司提供“SALVISCOUNT”轮将“海敏”轮由斯里兰卡科伦坡安全锚地拖带至中国青岛安全锚地。

被告敏航公司于2010年12月3日发出共同海损声明，要求货方在船舶抵达目的港前提供共损协议书及担保函，并载明：在提供令船方满意的共同海损担保之前，货物将不会被交付收货人。

原告提供被告敏航公司于2011年2月1日发出的留置货物通知传真件，载明：为保护我方权益，船东将在收到共损担保前在船留置货物。

2011年2月2日1600时，“SALVISCOUNT”轮船长在青岛港3号锚地将安全锚泊的“海敏”轮移交给“海敏”轮船长。被告敏航公司确认已向海马拖航国际贸易有限公司支付拖航费用90万美元。

2011年3月8日，应原告的诉前保全申请，本院作出（2011）青海法保字第8号民事裁定书，对“海敏”轮予以扣押。

2011年5月4日，在本院的主持下，三方当事人各派代表签署《“SEA AGILITY”轮靠泊备忘录》，确定以下事项：1、在船舶靠泊前，被告海联公司同意退还2011年3月16日接受的2011年3月14日签发的共损担保函及共损协议书。原告同意在被告海联公司退还前述担保函和协议书的同时，向被告敏航公司提供二被告共同认可的有公章和签字/保单章，并填写地址和有效联系方式的共损协议书及共损担保函，否则，本备忘录无效。各方同意的交换新、旧担保函及协议书的地点为夏礼文律师事务所上海办事处。2、原告同意为该轮靠泊垫付所需费用，具体数额依实际所需，凭相关费用单据支付。原告同意在各方签署本备忘录的24小时内安排划付所需款项付至被告海联公司船舶代理人青岛远大

船务有限公司账户。3、各方同意在本备忘录签订后，立即协助安排“海敏”轮靠泊卸货；船舶靠泊卸货后，被告海联公司将提单NO.1项下货物交付原告。4、原告保证上述垫付的靠泊费用在原告货物应当分摊的共损费用中抵扣。同日，应原告的申请，本院作出（2011）青海法海商初字第73号解除扣押船舶命令，解除了对“海敏”轮的扣押。

2011年5月5日、5月6日，张家港保税区隆龙投资有限公司受原告委托，分别向青岛远大船务有限公司垫付“海敏”轮靠泊费用人民币280万元、200万元。

“海敏”轮于2011年5月10日开始靠港卸货，2011年5月12日卸货完毕并交付原告。

2011年5月26日，中华人民共和国黄岛出入境检验检疫局做出370200111029597号重量证书，载明：通过核查船舶水尺和卸货前后与货物数量有关的因素量，并根据经过必要修正的载重标尺，我们计算出卸下的货物的重量是83472公吨，扣除卸货时货物含水量0.78%，折算干吨重量82820.9公吨。

2011年6月1日，中华人民共和国青岛海关出具422720111277027428号进口货物报关单，载明：货物毛重83972099千克，数量83404448千克，总价8917603.58美元。

宁波市永欣公证处公证书原件及所附光盘记载：2011年1月31日伊朗61%磁粉矿港口现货车板价为人民币1190-1210元/湿吨，2011年2月9日伊朗61%磁粉矿港口现货车板价为人民币1190-1210元/湿吨，2011年5月12日伊朗61%磁粉矿港口现货车板价为人民币1180-1200元/湿吨。

另查明：2007年12月28日，被告海联公司与上海远洋船舶管理有限公司签订船舶委托管理协议书，约定由上海远洋船舶管理有限公司管理“海敏”轮。2008年3月5日，被告海联公司与上海远洋对外劳务有限公司在上海签订《船员雇佣协议书》，约定由上海远洋对外劳务有限公司派遣船员赴“海敏”轮工作。

2011年8月9日，“海敏”轮因另案当事人的申请被本院依法拍卖，原告在本院裁定强制拍卖船舶的公告期间，就本案相关债权进行了登记。

【案件焦点】

本案系在海上运输合同履行过程中产生的相关违约和侵权纠纷，存在不同的法律关系，其中包括海上货物运输合同项下短重争议、非法留置货物侵权损害赔偿及靠泊费用垫款争议。因本案所涉争议基于同一事实产生，故本院对本案分别依据不同的法律关系一并予以审理。争议焦点在于：一、海上货物运输合同项下短重争议项下：1、承运人的确定，2、货物短重责任的承担；二、非法留置货物侵权损害赔偿项下：1、留置行为人的确定，2、留置是否合法的问题，3、非法留置货物责任的承担；三、靠泊费用垫款应由哪一方返还。

【法院裁判要旨】

一，海上货物运输合同项下短重争议。

第一、承运人的确定。原告在庭审中主张被告敏航公司为涉案货物承运人，而被告敏航公司主张被告海联公司为承运人。本案相关事

实表明，被告海联公司不仅委托上海远洋船舶管理有限公司管理“海敏”轮，而且委托上海远洋对外劳务有限公司派遣船员赴“海敏”轮工作，并指定青岛远大船务有限公司为“海敏”轮本航次在青岛港的船舶代理人。据此，本院认为，被告敏航公司的该项主张成立，被告海联公司是该轮的船舶经营人，应被认定为涉案货物的承运人。

第二、货物短重责任的承担。原告经托运人鑫诚有限公司背书受让了涉案提单，成为提单合法持有人，是收货人，其与被告海联公司之间构成海上货物运输合同关系。被告海联公司作为承运人应当按照提单记载的数量向收货人交付货物，并对在承运人责任期间内发生的货物短少承担违约责任。涉案提单记载货物总重量为83972.099公吨，而根据黄岛出入境检验检疫局出具的重量证书：货物到港后经水尺计重总重量为83472公吨，则涉案货物短少500.099公吨。中华人民共和国进出口商品检验行业标准《进出口商品重量鉴定规程-水尺计重》规定：水尺计重的允许误差可以在5‰之内，因此，扣除5‰的误差后，涉案货物短少80.239公吨，该部分货物装船时的价值按每公吨106.2美元计算为8521.38美元（按2010年11月11日1美元对人民币汇率中间价6.6242元折合人民币56447.33元）。综上，被告海联公司未能依据提单记载的数量交付货物，应赔偿原告货物短重损失人民币56447.33元。

二、非法留置货物侵权损害赔偿。

第一、留置行为人的确定。原告主张被告敏航公司留置涉案货物，但被告敏航公司对此予以否认。本院认为，被告海联公司既没有宣告共同海损要求原告提供共损担保，也没有证据表明其宣示对货物行使

了留置权；而被告敏航公司在支付90万美元的拖航费用后，于2010年12月3日发出共同海损声明，不仅要求原告提供共损担保，而且声明中明确载明：“在提供令船方满意的共同海损担保之前，货物将不会被交付收货人”，另结合原告提交的证据8留置通知传真件，足以认定被告敏航公司对涉案货物进行了留置。

第二、留置是否合法的问题。《中华人民共和国海商法》第八十七条规定：“应当向承运人支付的运费、共同海损分摊、滞期费和承运人为货物垫付的必要费用以及应当向承运人支付的其他费用没有付清，又没有提供适当担保的，承运人可以在合理的限度内留置其货物。”被告敏航公司并非本案货物的承运人，其无权行使承运人的留置权，因此，被告敏航公司对涉案货物的留置是非法留置。

第三、非法留置货物责任的承担。被告敏航公司非法留置涉案货物，已构成侵权，对于原告由此产生的货款利息损失、货物市场行情下跌损失应承担赔偿责任；同时，被告海联公司作为承运人，未依照海上货物运输合同向原告交付货物，应认定其实际实施了协助被告敏航公司非法留置船载货物的行为，其与被告敏航公司已构成共同侵权，应当对原告的损失承担连带赔偿责任。原告已在信用证项下向鑫诚有限公司支付货款8739251.51美元（按2011年2月9日1美元对人民币汇率中间价6.585元折合人民币57547971.19元），自2011年2月2日“海敏”轮抵达青岛港起至2011年5月12日涉案货物交付原告止共99天，因非法留置产生的货款利息损失按当时金融机构一年期贷款基准利率6.06%计算为人民币945899.45元；根据宁波市永欣公证处公证书原件及所附光盘的记

载，2011年2月2日伊朗61%磁粉矿港口现货车板均价为人民币1200元/湿吨，2011年5月12日伊朗61%磁粉矿港口现货车板均价为人民币1190元/湿吨，非法留置期间产生的货物市场行情下跌损失按货物到港重量83472公吨、每吨下降10元计算为人民币834720元。综上，被告敏航公司、被告海联公司应连带赔偿原告货款利息损失人民币945899.45元、货物市场行情下跌损失人民币834720元。另外，《中华人民共和国海商法》第二十二条规定：“下列各项海事请求具有船舶优先权：……（五）船舶在营运中因侵权行为产生的财产赔偿请求。”因此，原告主张的货款利息损失、货物市场行情下跌损失的给付请求具有船舶优先权，可自“海敏”轮拍卖价款中优先受偿。

三、靠泊费用垫款争议。

三方当事人于2011年5月4日签署《“SEA AGILITY”轮靠泊备忘录》后，原告已委托张家港保税区隆龙投资有限公司向青岛远大船务有限公司垫付“海敏”轮靠泊费用人民币480万元。本院认为，被告海联公司作为承运人和船舶经营人，应当负责将涉案货物从波斯湾运至中国青岛港，“海敏”轮在青岛港靠泊的费用也应由其承担。被告海联公司应当支付的靠泊费用由原告垫付，双方之间已实际构成了借款合同法律关系，原告主张由被告海联公司返还该费用，理由正当，本院予以支持。青岛远大船务有限公司作为被告海联公司的船舶代理人代为收取了该款项，对于如何对外支付及费用是否合理，属于双方船舶代理合同的履行事宜，与本案争议无关。原告垫付费用的行为与被告敏航公司并无法律上的利害关系，原告对被告敏航公司的该项诉讼请求不能成立，本院

不予支持。至于原告认为其为“海敏”轮靠泊垫付的该费用应当从船舶拍卖所得价款中先行拨付，因不属于《中华人民共和国海商法》第二十四条规定的相关费用，因此，对于该主张本院不予支持。

经本院审判委员会研究决定，并依照《中华人民共和国民事诉讼法》第一百三十条、《中华人民共和国海事诉讼特别程序法》第一百一十一条、《中华人民共和国海商法》第四十六条、第五十五条、第七十一条、七十七条、七十八条、《中华人民共和国侵权责任法》第六条、第八条、《中华人民共和国合同法》第二百零六条的规定，判决如下：

一、被告海联国际船务有限公司赔偿原告中基宁波集团股份有限公司货物短重损失人民币56447.33元；

二、被告敏航公司、被告海联国际船务有限公司连带赔偿原告中基宁波集团股份有限公司货款利息损失人民币945899.45元；

三、被告敏航公司、被告海联国际船务有限公司连带赔偿原告中基宁波集团股份有限公司货物市场行情下跌损失人民币834720元；

四、被告海联国际船务有限公司返还原告中基宁波集团股份有限公司为“海敏”轮靠泊垫付的费用人民币480万元；

五、驳回原告中基宁波集团股份有限公司的其他诉讼请求。

【法官后语】

本案的难点在于承运人的确定。

本案提单由船舶代理公司代表船长施礼岗签发，从表面证据不能确定承运人身份，且原告在庭审中主张被告敏航公司为涉案货物承运人，而被告敏航公司主张被告海联公司为承运人，当事人分歧较大，因此有必要通过相关的事实予以认定。本案中，被告敏航公司仅在“海敏”轮中轴断裂时与拖航公司签订国际海上拖航合同及附约，并未实际参与海上货物运输合同的履行，因此其虽然处于船舶所有权人的地位，但并非船舶的实际经营人。而结合被告海联公司委托上海远洋船舶管理有限公司管理“海敏”轮，委托上海远洋对外劳务有限公司派遣船员赴“海敏”轮工作，并指定青岛远大船务有限公司为“海敏”轮本航次在青岛港的船舶代理人等事实，可以认定被告海联公司为船舶的实际经营人。

船舶经营人的概念，理论界存在不同观点。一种观点认为是指船舶所有人或光船承租人，或经正式转让承担所有人或光船承租人责任的企业法人，包括受船舶所有人委托经营管理其船舶的企业法人；另一种观点认为是指承运人、多式联运人、经纪人等；还有一种观点是指在航运实务上包括以自有船舶经营航运业务者、计时、计程佣船人、船舶租赁人及其他经营航运业务者。但不论适用哪一种观点，法律意义上的船舶经营人均具有船舶占有、使用、收益及有条件的处分权能。因此，被告海联公司作为“海敏”轮的船舶经营人，足以认定为涉案货物运输合同的承运人。

（转载自：中国涉外商事海事审判网）

Shipment was not Dispatched – Exporter is Suing for Damages

by Shmuel Grossman (Grossman, Singer, Gilad and Co. Law Offices)

A company handling acquisition and marketing of metal waste contacted a client from England and agreed upon the exporting of an aluminium slag shipment to Spain.

In order to export the shipment, the company contacted a customs agent requesting a price offer for marine shipping of the shipment. The custom agent received a price offer from a ship's agent in Israel on behalf of a shipping company and based on such price offer, the company guaranteed the client in England a shipment of 4 containers of aluminium slag to be shipped to Spain by sea carriage.

Later, the company contacted the customs agent and requested a booking with the shipping company, and a

confirmation was indeed given by the shipping company, as well as a booking number. The company was given 4 empty containers by the shipping company in order to load the cargo; these were loaded with aluminium slag and transported to the port of Ashdod, so they would be available for loading on board the ship. Several days afterwards, the customs agent informed the company that the shipping company does not permit transportation of said cargo, attempts to solve the dispute did not succeed, and the company was forced to empty the containers of the aluminium slag and return them to the shipping company.

The company instituted legal proceedings for claimed damages against the ship's agent in Israel. These damages are mainly the revenue differences between sale of the cargo to the English client and the revenues from the alternative sale of the cargo, at a reduced price, to a client in Israel. (Additionally, the company sued for a refund of the transport costs by land and subsequent costs.)

The company claims that the shipping company should have informed the company beforehand that it does not permit

transport of the cargo, and should have done so at the order confirmation stage, before the company was allowed to take the empty containers to load the cargo. The shipping company's refusal to transport the cargo at such a late stage, after loading the cargo into the containers, has caused the company great damages, including the cancellation of the business transaction with the English client and selling the cargo at a reduced price to a client in Israel.

The defendant (ship's agent) has stated as a preliminary claim that there is no opponency with said company, since it isn't the shipping company, but is only the shipping company's representative in Israel. The Tel Aviv Magistrates Court has rejected this claim and ruled that all agreements and negotiations concerning transportation of the cargo are between the company and the defendant (with the customs agent acting as a middleman), a fact that demonstrates the direct involvement of the defendant and an indication of a direct opponency between it and the company. The defendant's conduct deviated from an agent's conduct alone, acting not as a mediating authority but as a communicator in itself.

The main issue that demanded the Court's ruling was if the company was permitted to rely on the defendant's price offer for transporting the cargo alone, a price offer after which a booking number and confirmation were given and empty containers were supplied to load the aluminium slag into them. The defendant claimed that when the price offer was given, several reservations were already stated: A confirmation of the shipping company was needed to load the cargo since the shipping company does not carry waste cargo, and before loading the cargo on board the ship, the shipping company must be given a declaration of hazardous materials. Since the cargo is defined as "waste cargo", and since the declaration of hazardous materials was given only after the shipping company's refusal, the company should have known that the price offer alone cannot be relied upon and that the shipping company would not approve loading of the cargo on board the ship.

The court accepts the shipping company's statement and rejects the claim against it. Rejection of the claim is largely based on the involvement of the customs agent. The court

consolidates the shipping company's claim that the export procedure of hazardous materials in general, and of waste cargo specifically, is a complex procedure, with strict and complicated regulations, which must be taken care of by an expert professional. There is no disagreeing with the company not being an expert of freight shipping, the procedures involved and the terminology, which is why it hired the services of the customs agent specializing in international freight forwarding. The customs agent is updated in all the shipping company's regulations and is well acquainted with the marine transport regulations of hazardous materials. He is the one who should have informed the company of them. In this case, the customs agent was well aware that the booking number and confirmation do not act as a certificate of approval, an approval which can only be given after declaring hazardous materials. The court rules that the custom agent's knowledge acts as the company's knowledge. Receiving the empty containers also does not act as proof of the shipping company's approval to transport the cargo, since the international forwarders receive, beforehand, confirmations to use empty containers when needed.

The court expressed its surprise that the customs agent's representatives weren't summoned to give testimony. There is no doubt that their testimony could have clarified the case further, especially due to the criticism heard on both sides, of the customs agent's conduct as a professional authority and as a "repeated actor" in the freight shipping field, whose duty was to mediate between both sides so that at least some of the company's damage would have been prevented.

The court rejects the claim against the shipping company and rules that the company couldn't have just relied on the price offer sent by the shipping company.

Two conclusions arise from the judgment:

First – the court's ruling, rejecting the ship's agent's claim of non-opponency, is interesting. Ship's agents tend to claim that they are not involved with the client (even though the entire procedure happened between the client and them), and that the client should sue the shipping company abroad for the inconvenience and costs entailed. Perhaps this verdict will reduce the Ship's agents' claim of non-opponency.

Second – it isn't clear why the company avoided summoning the custom's agent for testimony, or even adding it as an additional defendant. The customs agent is the professional authority whose duty is to instruct the client (exporter/importer) of the relevant regulations, especially when sensitive and complicated issues such as transporting hazardous materials are concerned. As a service provider to the exporter/importer, the customs agent's knowledge – of professional matters relevant to international transportation – is considered as its client's knowledge, even if one cannot determine if the client knew of it in actual fact. Since no appropriate instructions were given to the client, the customs agent could expose itself to a professional responsibility lawsuit by the client.

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